

CONTRACT WITH MADE IN DURHAM TO
SUPPORT THE DEVELOPMENT OF AN EDUCATION TO WORK PIPELINE SYSTEM
FOR YOUTH IN DURHAM

This contract is dated, made, and entered into as of the ____ day May, 2015, by the City of Durham, a N.C. municipal corporation, (hereinafter referred to as "CITY") and Made in Durham, a North Carolina non-profit corporation (hereinafter referred to as "MID") with offices at 307 West Main Street, Durham, North Carolina 27701, each a party and collectively "the Parties".

Sec. 1. Background and Purpose. MID is a non-profit corporation having formed a public-private partnership designed to build an education-to-career system to connect Durham youth and young adults to postsecondary credentials and economically rewarding work ("Project");

The Board of Directors of MID has committed to funding the annual operating budget of \$900,000, for the fiscal year beginning July 1, 2015, on the basis of 2/3 private-sector funding and 1/3 public-sector funding.

Sec. 2. Services and Scope to be Performed. Presumption that Duty in Contractor's. Contractor shall perform the services and activities outlined in Attachment A. Those services and activities are hereby referred to in this contract as "the program." The Contractor shall begin performance of those services and activities on or about July 1, 2015. It shall complete those services and activities by June 30, 2016.

Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor's Billings to City. Compensation. The City shall make payment on a cost reimbursement basis to the Contractor for services and activities described in Attachment A, according to the following payment schedule:

- Up to \$100,000 on or before June 30, 2015 subject to a deliverables report that outlines activities in Attachment A and an invoice in an amount not to exceed \$100,000;
- Up to \$25,000, on or before September 30, 2015 subject to a deliverables report that outlines activities in Attachment A and an invoice in an amount not to exceed \$25,000;
- Up to \$25,000, on or before December 31, 2015 subject to a deliverables report that outlines activities in Attachment A and an invoice in an amount not to exceed \$25,000;
- Up to \$25,000, on or before March 31, 2016 subject to a deliverables report that outlines activities in Attachment A and an invoice in an amount not to exceed \$25,000;

- Up to \$25,000, on or before June 30, 2016 subject to a deliverables report that outlines activities in Attachment A and an invoice in an amount not to exceed \$25,000.

and budget set forth in Attachment B, which is attached hereto and incorporated herein said payment shall not exceed \$200,000.00. Payment shall be made by the City within 30 days of receipt of invoices for services received from the Contractor. The Contractor shall send invoices to the Office of Economic and Workforce Development whose name and address shall be provided by the City. The City shall provide the Contractor with blank reporting forms referred to in this Contract, and/or instructions for creating the reports referred to in this Contract, and Contractor agrees to use those forms and instructions. Notwithstanding anything in the Contract which may be to the contrary.

Contractor performance will be reviewed on a quarterly basis. Failure to reach the goals and objectives, and failure to carry out the services and activities as set out in Attachment A in a timely manner, will result in delay of payment to the Contractor by the City. In the event that the Contractor fails to fulfill its responsibilities under this Contract as set out in Attachment A, Contractor will be in breach of the Contract.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes sub-consultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or
(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor. This subsection (b) does not limit any other rights to withhold payments that the City may have. (c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. *to be added*

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Attachment A the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following attachments are made a part of this contract:

Attachment A	Statement of Work
Attachment B	Program Budget

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Kevin Dick
Director, Office of Economic and Workforce Development
City of Durham
Office of Economic and Workforce Development
807 E. Main St. Building 5-100
Durham, North Carolina 27703
The fax number is (919) 560-4986

To the Contractor:

Meredythe Holmes
Executive Director
Made In Durham
307 West Main Street
Durham, NC 27701

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless indemnities from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the

Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Contractor shall at its sole expense defend Indemnities with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnities” means City and its officers, officials, independent Contractors, agents, and employees, excluding the Contractor (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnities against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnities.

Sec. 12. Termination for Convenience (“TFC”). (a) Procedure. Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) Payment. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 13. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in

accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no

deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor’s alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) City’s Manager’s Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers. The individual signing on behalf of the Contractor warrants that he or she has the authority to bind the Contractor to this contract

ATTEST:

CITY OF DURHAM

By:_____

preaudit certificate, if applicable _____

STATEMENT OF WORK

MID agrees to provide the following services during the term cited in paragraph 1 above:

Pathway & Employer System Outcomes

- a. Increased and enriched work-based learning activities for young people interested in the Health and Life Sciences (HLS) sector at Southern School of Engineering & Sustainability and selected nonprofits (for disconnected youth) as well as other agencies as part of the Durham YouthWork Program. Additionally there will be WBL opportunities in the classroom for YouthWork summer work experiences in June as well as for year-round opportunities. MID will develop 30 new Durham YouthWork Internship opportunities (summer and/or year-round) in the Health and Life Sciences fields each year. MID will develop 20 internship opportunities (summer and/or year-round) for disconnected youth each year.
- b. Development and implementation of the prototype HLS pathway, which will be implemented in Year 2.
- c. Serve as part of the team developing a coordinated employer outreach approach involving key partners: DPS, DTCC, NCCU, DWDB. Specifically, MID will provide expertise on and recruitment for Health and Life Science businesses.
- d. Development of private sector resources for engagement and occupational skills training for youth.
- e. Submission of a report on occupational options and corresponding wages within HLS, which would serve as a user-friendly tool for parents, students, teachers, counselors, and others on the good jobs in HLS and the skills and training required to get them. This will be a prototype for LMI info in other sectors for Durham residents.
- f. Work with partners to ensure appropriate academic supports for specific careers.

Data System Outcomes

- a. MID will establish baseline data and articulation of performance metrics linked to MID's 9 established measures in creating data systems to enable measurement.
- b. Development of resources for LMI studies for Durham and region.
- c. . Assistance in building a system for Youth Providers that would provide a unified system for all supportive services and that all partners could access. This would eliminate duplication of effort and would streamline the work of the Partner agencies.

ATTACHMENT B

Contractor Budget - attached